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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

AMERICAN FEDERATION OF TEACHERS,
et al.,

Case No. 5:20-cv-455-EJD

Plaintiffs,
v.

ELISABETH DEVOS, in her official capacity as Secretary of Education, *et al.*,

Defendants.

PEOPLE OF THE STATE OF CALIFORNIA
ex rel. Xavier Becerra, Attorney General of
California.

Case No. 5:20-cv-1889-EJD

Plaintiffs.

V

**IN SUPPORT OF MOTION FOR
PARTIAL RECONSIDERATION**

BETSY DEVOS, in her official capacity as
Secretary of Education, et al

Judge: Hon. Edward J. Davila

Defendants

Pursuant to Civil Local Rule 7-11, Defendants respectfully request leave to file the proposed reply in support of their motion for partial reconsideration of the Court's Order of September 3, 2020. Defendants have reviewed the memoranda in opposition to Defendants' motion and believe that the Court's Order is erroneous. Defendants' proposed reply will set forth the reasons why the Court's Order is erroneous and why Defendants are entitled to partial reconsideration.

1 motion, filed on October 22, 2020, by Plaintiffs in each of the above-captioned cases and believe
 2 that a short reply brief is warranted in order to address mischaracterizations in Plaintiffs'
 3 memoranda of controlling and persuasive authorities and of Defendants' positions. Defendants
 4 further state the following in support of their motion for leave:

5 In its Order of September 3, 2020, the Court granted in part and denied in part
 6 Defendants' motions to dismiss the above-captioned cases. On September 15, 2020, Defendants
 7 filed a motion for leave to file a motion for partial reconsideration. At the case management
 8 conference held on October 1, 2020, the Court granted Defendants' motion for leave and
 9 indicated that it would allow Plaintiffs to file memoranda in opposition to Defendants' motion for
 10 partial reconsideration but would not schedule a reply brief for Defendants. Instead, the Court
 11 indicated that, if Defendants wished to file a reply brief after reviewing Plaintiffs' opposition
 12 briefs, Defendants should seek leave to do so at that time. In accord with the Court's direction, the
 13 parties conferred and stipulated that Plaintiffs' memoranda in opposition would be filed by
 14 October 22, 2020. Plaintiffs in the above-captioned cases separately filed memoranda in
 15 opposition on the dockets of their respective cases on that date.

16 Having reviewed Plaintiffs' memoranda, Defendants seek leave to file the attached
 17 combined reply brief, less than eight pages in length, in further support of their motion for partial
 18 reconsideration. In particular, Defendants seek to identify and correct mischaracterizations of case
 19 law, and of Defendants' positions, in Plaintiffs' memoranda. Particularly given that Defendants'
 20 motion concerns the Court's subject matter jurisdiction and that California continues to advance a
 21 novel theory of standing for claims under the Administrative Procedure Act without
 22 acknowledging that their theory is in fact novel, Defendants believe their submission of a reply
 23 brief could be helpful to the Court. It is within the Court's discretion to authorize this filing.¹

24 ¹ Undersigned counsel for Defendants has conferred with counsel for Plaintiffs, who stated that
 25 they would not stipulate to the filing of a reply and requested that Defendants state their position
 26 as follows: "Plaintiffs in the *AFT* and *California* matters ("Plaintiffs") oppose this motion. At the
 27 October 1, 2020 hearing, the Court unambiguously expressed its inclination to limit further
 28 briefing, and suggested that Plaintiffs be mindful of that guidance in opposing the Motion for

Accordingly, Defendants respectfully request that the Court grant Defendants leave to file the attached reply and order the Clerk of Court to enter the attached as filed on the dockets of each of the above-captioned cases.

DATED: October 30, 2020

Respectfully submitted,

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Partial Reconsideration. Plaintiffs limited their respective Opposition briefs accordingly. No reply is warranted under these circumstances.” *See also* Declaration of Kathryn Wyer, attached hereto. Contrary to Plaintiffs’ suggestion, the Court’s statement at the CMC about limiting further briefing related primarily to whether Plaintiffs were allowed, in their opposition brief, to address issues beyond those raised in Defendants’ motion. The Court indicated that Plaintiffs’ opposition brief should not introduce new issues. In accord with that direction, Defendants’ short proposed reply does not seek to introduce new issues but instead seeks to respond to Plaintiffs’ briefing.